

Exhibit Z

Ruling Number	Ruling	Testimony
1	Objection sustained.	<p>Page 53:17-54:15 17 MR. DUBIN: I will lay a 18 further foundation for it. 19 BY MR. DUBIN: 20 Q. We are going to be talking about 21 your work identifying chrysotile in Johnson & 22 Johnson, but, typically, when MAS was 23 identifying chrysotile in Johnson & Johnson, 24 it was -- what was being called chrysotile was 25 yellow in parallel, right? Page 54 1 MR. LUDWIG: Same objection. 2 That is exactly what the Court 3 ruled upon. So objection. 4 MR. DUBIN: No. Those are the 5 reports at issue, which the Court said we 6 could ask about. 7 MS. O'DELL: And if you would 8 like to ask Mr. Hess about specific reports, 9 he is here and prepared to respond to your 10 questions, but asking for expert opinion is 11 beyond the scope of what Judge Schneider 12 established for this deposition and we'll 13 instruct the witness not to answer. 14 MR. LUDWIG: I instruct the 15 witness not to answer that question.</p>
2	Objection sustained but witness shall answer what color are the particles that you are calling Chrysotile in Tables 1-7 of Longo's report.	<p>Page 54:17-55:25 17 Q. In your reports identifying 18 chrysotile in Johnson & Johnson, what color 19 are the particles that you're calling 20 chrysotile typically in parallel? 21 MR. LUDWIG: Objection to form. 22 THE WITNESS: The colors that I 23 utilize to determine the wavelength are at the 24 edge of the particle and not in the center. 25 BY MR. DUBIN: Page 55 1 Q. Okay. What color are the particles? 2 MS. O'DELL: Objection to the 3 form. 4 What particle? What -- 5 BY MR. DUBIN:</p>

		<p>6 Q. The particle that you're calling</p> <p>7 chrysotile in the reports that you're talking</p> <p>8 about today?</p> <p>9 MR. LUDWIG: Is there a</p> <p>10 specific report you want to show him? This</p> <p>11 right here, it looks like an exhibit created</p> <p>12 by defense counsel. So that's not -- he is</p> <p>13 not here to opine about this exhibit that</p> <p>14 looks like a PowerPoint by someone else.</p> <p>15 This is not a --</p> <p>16 MR. DUBIN: This is enough</p> <p>17 speaking objections. You can make your</p> <p>18 objections if you want to make your</p> <p>19 objections. If you want to instruct your</p> <p>20 witness not to answer the question, then you</p> <p>21 can do that, but no more speaking objections.</p> <p>22 It's gone way too far.</p> <p>23 MR. LUDWIG: Based on the scope</p> <p>24 that the Judge had lined out, I am instructing</p> <p>25 him not to answer that question.</p>
3	Objection overruled.	<p>Page 58:23-60:4</p> <p>23 MR. DUBIN: And I am going to</p> <p>24 identify the specific page that we're talking</p> <p>25 about. So let's put it in chat and then we</p> <p>Page 59</p> <p>1 can call it up, okay, and then we're going to</p> <p>2 go to page 3 of this.</p> <p>3 MS. O'DELL: And if you would</p> <p>4 identify -- please, just if you'll go back to</p> <p>5 page 1. Because I am not seeing it in the</p> <p>6 chat yet.</p> <p>7 MR. LUDWIG: It's in the chat</p> <p>8 here now.</p> <p>9 MR. DUBIN: It is in the chat.</p> <p>10 MS. O'DELL: Okay.</p> <p>11 MR. DUBIN: 296, actually, is</p> <p>12 the image and we can rotate that so we can see</p> <p>13 it better.</p> <p>14 MS. O'DELL: And what's -- I'm</p> <p>15 sorry, Morty. I couldn't see it. I was too</p> <p>16 slow trying to see. I see here. Just a</p> <p>17 moment. Let me make sure that this is</p> <p>18 actually a report at issue in the MDL.</p> <p>19 This is not one of the reports</p> <p>20 that's been disclosed in the MDL and so we</p>

		<p>21 would object to questioning based on that.</p> <p>22 MR. LUDWIG: If it's not a</p> <p>23 report disclosed in the MDL and it's not</p> <p>24 subject to the Judge's scope, then I am</p> <p>25 instructing the witness not to answer. I</p> <p>Page 60</p> <p>1 don't know if it's his report or not. I trust</p> <p>2 Ms. O'Dell.</p> <p>3 So you're instructed not to</p> <p>4 answer.</p>
4	<p>Objection sustained but</p> <p>witness shall answer with</p> <p>regard to the relevant tests</p> <p>did you use a blue light or</p> <p>daylight filter and why.</p> <p>Witness may also be asked</p> <p>what were the</p> <p>microscope's settings.</p>	<p>Page 65:17-66:1</p> <p>17 Q. All right. We'll come back to that</p> <p>18 in a bit.</p> <p>19 Do you know what the purpose is</p> <p>20 of a blue light or a daylight filter?</p> <p>21 MS. O'DELL: Object to the</p> <p>22 form.</p> <p>23 MR. LUDWIG: Object to the</p> <p>24 form, yeah. It calls for expert testimony.</p> <p>25 I instruct you not to answer</p> <p>1 that question.</p>
5	<p>Objection sustained.</p>	<p>Page 66:2-67:5</p> <p>2 MR. DUBIN: You're instructing</p> <p>3 him not to answer? I am asking him about the</p> <p>4 work he did, how he set up his microscope, and</p> <p>5 what filters he was using and you're</p> <p>6 instructing him not to answer that?</p> <p>7 MS. O'DELL: That was not your</p> <p>8 question.</p> <p>9 MR. DUBIN: Well, I just asked</p> <p>10 him about whether it had a blue light filter</p> <p>11 and whether he was using it and I am asking</p> <p>12 him now what his understanding of the purpose</p> <p>13 of that type of filter is. Are you</p> <p>14 instructing him not to answer that question?</p> <p>15 MS. O'DELL: He is here to --</p> <p>16 he is here to testify to what he did, which</p> <p>17 he -- the equipment he used, which he has been</p> <p>18 responding to those questions.</p> <p>19 Understanding about certain</p> <p>20 methodologies, giving his opinion about</p> <p>21 certain methodologies is beyond the scope of</p> <p>22 what Judge Schneider has ordered.</p> <p>23 MR. DUBIN: Are you instructing</p> <p>24 him not to answer --</p> <p>25 MR. LUDWIG: The objection --</p>

		<p>Page 67</p> <p>1 MR. DUBIN: -- a simple</p> <p>2 question about the purpose of a blue light</p> <p>3 filter? Are you instructing him not to</p> <p>4 answer?</p> <p>5 MR. LUDWIG: Yes.</p>
6	Objection sustained but witness shall answer the question at 69:6-8 with regard to the relevant tests.	<p>Page 69:3-17</p> <p>3 (Exhibit 7 marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Page 22, can you tell me if a blue</p> <p>7 light or daylight filter is being used on this</p> <p>8 image?</p> <p>9 MR. LUDWIG: Objection --</p> <p>10 objection. This, once again, calls for expert</p> <p>11 opinion, which is outside the scope of the</p> <p>12 purpose of this deposition as instructed by</p> <p>13 the Judge.</p> <p>14 MR. DUBIN: Are you instructing</p> <p>15 him not to answer the question?</p> <p>16 MR. LUDWIG: I am instructing</p> <p>17 him not to answer the question.</p>
7	Objection sustained.	<p>Page 70:6-71:21</p> <p>6 (Exhibit 8 marked for</p> <p>7 identification.)</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. I am putting up the image that I</p> <p>10 showed you before, as well as the image from</p> <p>11 Zimmerman that I showed you before. These are</p> <p>12 both analyses that you performed.</p> <p>13 Can you tell me why the color</p> <p>14 of the talc is different in the two images?</p> <p>15 MS. O'DELL: We object to the</p> <p>16 use of this document. First, Vanderbilt is</p> <p>17 not at issue in this case, it's not a report</p> <p>18 that's at issue in this case. We object to</p> <p>19 the use of that image.</p> <p>20 To the degree you want to have</p> <p>21 him -- ask him about the Zimmerman report.</p> <p>22 You had it up. He is welcome to answer</p> <p>23 questions, but we object to the use of this</p> <p>24 defense created exhibit.</p> <p>25 MR. LUDWIG: And I am going to</p> <p>Page 71</p> <p>1 join and I am going to instruct him not to</p> <p>2 answer.</p>

		<p>3 Once again, you're getting into</p> <p>4 expert opinion, which is outside the scope of</p> <p>5 what the Judge instructed this witness.</p> <p>6 MR. DUBIN: Was your -- okay.</p> <p>7 So you're instructing him not to answer. I am</p> <p>8 going to ask another question. If you</p> <p>9 instruct him not to answer, then so be it.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. But was the microscope set up</p> <p>12 differently in these two analyses? Can you</p> <p>13 tell by looking at the images whether the</p> <p>14 microscope was set up differently in the two</p> <p>15 analyses?</p> <p>16 MR. LUDWIG: Same objection.</p> <p>17 MS. O'DELL: Please put the</p> <p>18 exhibit in the chat.</p> <p>19 MR. DUBIN: Are you instructing</p> <p>20 him not to answer?</p> <p>21 MR. LUDWIG: Yes.</p>
8	Objection sustained.	<p>Page 72:18-73:5</p> <p>18 Q. Are you familiar -- you're familiar</p> <p>19 with ISO 22262-1?</p> <p>20 A. Familiar.</p> <p>21 Q. Do you know whether it says anything</p> <p>22 about using blue or daylight filters?</p> <p>23 MS. O'DELL: Object to the</p> <p>24 form; calls for expert opinion; beyond the</p> <p>25 scope of the work that Mr. Hess did in the</p> <p>Page 73</p> <p>1 MDL; and that's my objection.</p> <p>2 Counsel can decide whether to</p> <p>3 instruct him not to answer.</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 you not to answer that.</p>
9	Objection sustained.	<p>Page 76:5-16</p> <p>5 Q. Do you know why your images taken on</p> <p>6 the Olympus microscope of talc are more orange</p> <p>7 than reference talc images?</p> <p>8 MS. O'DELL: I object to the</p> <p>9 use of this exhibit. It's unclear if it came</p> <p>10 from a report that's at issue in this</p> <p>11 deposition, it's unclear if it's -- if it's</p> <p>12 Mr. Hess' work, and we object to its use.</p> <p>13 MR. LUDWIG: And I will join.</p> <p>14 It outside the scope of the parameter of the</p> <p>15 deposition. I am instructing Mr. Hess not to</p>

		16 answer that question.
10	Moot. Question answered.	<p>Page 76:19-78:9</p> <p>19 Q. Let's, again, go to your Zimmerman 20 report. We have already marked that as an 21 exhibit. We can call it back up, CX-6. So we 22 have looked at this already. Let's go back to 23 that image, starting at page 39. 24 So this is something that 25 you're calling chrysotile in parallel in 1 1.550. 2 What color is that? 3 MS. O'DELL: If you need to see 4 it and see it more closely, Mr. Hess, please 5 let us know that. 6 And if there is -- if there is 7 a specific structure you're referring to that 8 you can direct Mr. Hess? 9 MR. DUBIN: Right. 10 BY MR. DUBIN: 11 Q. The one with the micron bar under it 12 is the one that they are calling chrysotile. 13 What color is it? 14 MR. LUDWIG: Can I have that 15 question reread, please? 16 THE COURT REPORTER: One 17 moment. 18 "QUESTION: So this is 19 something that you're calling chrysotile 20 in parallel in 1.550. 21 "What color is that?" 22 MR. LUDWIG: I am going to 23 object once again. It's calling for an expert 24 opinion. 25 MR. DUBIN: This is -- I am 1 asking him about his reports that are at issue 2 in this case and asking him what color that he 3 is calling particles and that is exactly in 4 the scope of the deposition. 5 So unless you're instructing 6 him not to answer that as well, my question 7 stands. 8 MR. LUDWIG: I instruct him not 9 to answer that question.</p>
11	Moot. Question answered.	<p>Page 78:10-79:11</p> <p>10 MR. DUBIN: Okay. So now</p>

		<p>11 you're instructing the witness not to answer 12 questions even about the specific reports that 13 he was -- that we were permitted to depose him 14 on. 15 Is that my understanding? 16 MS. O'DELL: So would you 17 repeat your question, please? 18 MR. DUBIN: Oh, my goodness. 19 What color is the particle that you're calling 20 chrysotile here? 21 MR. LUDWIG: I am standing by 22 my objection. I am instructing him not to 23 answer. 24 It goes to -- you're asking him 25 to opine as to the color. The color is on the Page 79 1 screen and it is part of an expert report 2 prepared by MAS and you're taking it out of 3 context. 4 So I am going to instruct you 5 not to answer. 6 If you want to ask him how he 7 developed the color, that's what the Judge 8 said, but -- 9 MR. DUBIN: (Inaudible.) 10 MR. LUDWIG: -- his personal 11 involvement.</p>
12	Objection sustained.	<p>Page 81:16-82:9 16 MR. DUBIN: Okay. Let's put up 17 Hess slide 25 as exhibit 11. 18 (Exhibit 11 marked for 19 identification.) 20 BY MR. DUBIN: 21 Q. We're looking at images of PLM -- 22 and I will mark the entire report also from 23 Mr. Poye and from you -- both from on talcs. 24 Do you have any understanding 25 why the images look so different? 1 MR. LUDWIG: Objection to form; 2 that goes into expert testimony and you made 3 your question -- this appears to be a defense 4 exhibit, I guess, comparing two different 5 samples. It is not a specific report from 6 MAS. 7 So I am instructing the witness 8 not to answer. This calls for expert opinion,</p>

		9 outside the scope of his testimony.
13	Objection sustained.	<p>Page 84:8-25</p> <p>8 Q. Okay. Have you reviewed his</p> <p>9 affidavit entitled: Review of Dr. Longo's PLM</p> <p>10 Methods for the Identification of Chrysotile?</p> <p>11 A. I don't recall that one.</p> <p>12 Q. Okay. What, if any, comments do you</p> <p>13 have on the slides that you reviewed from</p> <p>14 Dr. Su?</p> <p>15 A. Well --</p> <p>16 MS. O'DELL: Object to form.</p> <p>17 MR. LUDWIG: Object to the</p> <p>18 form.</p> <p>19 MS. O'DELL: Calls for expert</p> <p>20 opinion. It's beyond the scope of this</p> <p>21 deposition.</p> <p>22 MR. DUBIN: Are you instructing</p> <p>23 him not to answer?</p> <p>24 MR. LUDWIG: I am instructing</p> <p>25 him not to answer.</p>
14	Objection sustained.	<p>Page 85:2-86:9</p> <p>2 Q. You also indicated you reviewed some</p> <p>3 materials from Dr. Wylie?</p> <p>4 MS. O'DELL: Same.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. What did you review?</p> <p>7 A. The report that -- I don't recall</p> <p>8 the name of the report, but I believe it was</p> <p>9 her most recent report.</p> <p>10 Q. Okay. Do you have any comments on</p> <p>11 the -- on her review of your work?</p> <p>12 MR. LUDWIG: Same objection.</p> <p>13 I instruct him not to answer.</p> <p>14 He is not here to provide criticisms of</p> <p>15 Dr. Wylie. The Court made it very clear, the</p> <p>16 scope of the testimony.</p> <p>17 MS. O'DELL: Join.</p> <p>18 MR. DUBIN: These are all</p> <p>19 related to his work that is the subject of</p> <p>20 this deposition, but if you're instructing him</p> <p>21 not to answer, then that will be an</p> <p>22 instruction. We'll take it up at some point.</p> <p>23 Because we're clearly going to</p> <p>24 have to go back to the drawing board about the</p> <p>25 way that these objections are being made, but</p> <p>1 if you're instructing him not to answer, but</p>

		<p>2 my proffer is that they are all about the</p> <p>3 reports at issue in this case.</p> <p>4 MS. O'DELL: Mr. Hess is here</p> <p>5 today to answer questions regarding his</p> <p>6 reports and he has answered your questions</p> <p>7 about those. He is not here to offer expert</p> <p>8 opinion, criticism, thoughts, et cetera, about</p> <p>9 defense or expert witnesses.</p>
15	Objection sustained.	<p>Page 90:24-91:12</p> <p>24 Q. Okay. And what is the expected</p> <p>25 effect if you are switching from 1.550 to 1.60</p> <p>Page 91</p> <p>1 oil?</p> <p>2 A. We didn't switch to 1.60.</p> <p>3 Q. Sorry. What did you say?</p> <p>4 A. That we didn't switch to 1.60.</p> <p>5 Q. You didn't switch to 1.560? Maybe I</p> <p>6 misspoke.</p> <p>7 What is the expected effect of</p> <p>8 switching to one, five -- 1.560 oil?</p> <p>9 MR. LUDWIG: I'm going to</p> <p>10 object; that calls for an expert opinion. I</p> <p>11 am instructing the witness not to answer that</p> <p>12 question.</p>
16	Objection sustained but witness shall answer with regard to the relevant tests (and if used) did the tungsten lamp add darker golden colors or orange colors to the image.	<p>Page 93:19-96:19</p> <p>19 Q. Now, I want to just quickly flip</p> <p>20 back to the Zimmerman report we have already</p> <p>21 looked at, the image, and if we can just look</p> <p>22 at the image we had up before.</p> <p>23 Can you see that the image in</p> <p>24 the Zimmerman report is more golden or orange</p> <p>25 than the image in the Valadez report? We can</p> <p>1 go back and forth between them if you need to.</p> <p>2 MR. DUBIN: Can we flip back to</p> <p>3 Valadez?</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. Do you see that the Zimmerman report</p> <p>6 image is more golden or orange?</p> <p>7 A. I do.</p> <p>8 Q. Do you know why that is?</p> <p>9 A. From the BH2, which is the Zimmerman</p> <p>10 report, we were on a tungsten lamp, and it was</p> <p>11 to the respect that we were dealing with extra</p> <p>12 yellows from the tungsten lamp.</p> <p>13 Q. So the tungsten lamp was changing</p> <p>14 the color of the particle then?</p>

		<p>15 MS. O'DELL: Object to the 16 form. 17 MR. LUDWIG: Object to form. 18 BY MR. DUBIN: 19 Q. Is that correct? 20 MS. O'DELL: Object to the 21 form. 22 THE WITNESS: We felt it was 23 adding more yellow to the image of what we 24 were seeing and what we were documenting. 25 BY MR. DUBIN: Page 95 1 Q. Okay. And it wasn't just adding 2 yellow. If we go back to the Zimmerman report 3 image, it was adding sort of darker golden 4 colors or orange colors to the image, right? 5 MS. O'DELL: Object to form. 6 MR. LUDWIG: Objection. This 7 calls for an expert opinion. 8 I will instruct you not to 9 answer that one. 10 MR. DUBIN: You're instructing 11 him not to answer that question about the 12 comparison between these two images? 13 MR. LUDWIG: Correct. You're 14 testifying and I am going to object to that 15 one. 16 MR. DUBIN: You're objecting 17 and you're instructing your witness not to 18 answer a question about the impact of lighting 19 on his images in the reports at issue in this 20 deposition and you're instructing him not to 21 answer. 22 Is that my understanding? 23 MR. LUDWIG: Could you -- let 24 me hear the question again because I think 25 you -- what you said was different than what Page 96 1 your question was. 2 MR. DUBIN: We can read the 3 question back. 4 THE COURT REPORTER: One 5 moment. 6 "QUESTION: And it wasn't just 7 adding yellow. If we go back to the 8 Zimmerman image, it was adding sort of</p>
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		<p>9 darker golden colors or orange colors to 10 the image, right?"</p> <p>11 MS. O'DELL: Object to the 12 form.</p> <p>13 MR. LUDWIG: I am going to 14 stand by my objection.</p> <p>15 MR. DUBIN: So you're not just 16 objecting. You're instructing him not to 17 answer that question. I need to understand 18 that.</p> <p>19 MR. LUDWIG: Correct.</p>
17	Objection sustained but witness shall answer with regard to the relevant tests (and if used) whether tungsten lighting is adding golden colors and more orange color to the images.	<p>Page 97:19-98:3</p> <p>19 Q. So, again, I am asking you a 20 question about this image.</p> <p>21 The tungsten lighting is not 22 just adding more yellow; it's adding golden 23 colors and more orange color to the images, 24 right? Is that correct?</p> <p>25 MR. LUDWIG: Object.</p> <p>1 I instruct you not to answer.</p> <p>2 MR. DUBIN: You're instructing 3 him not to answer that question. Okay.</p>
18	Objection sustained.	<p>Page 103:5-15</p> <p>5 Q. Are you familiar with the fact that 6 you can -- that even with Cargille glass that 7 has a single refractive index, you can 8 sometimes see edge colors that don't 9 correspond to that refractive index?</p> <p>10 MS. O'DELL: Objection; seeks 11 expert opinion beyond the scope of the 12 deposition. I will let Mr. Hess' counsel 13 instruct him.</p> <p>14 MR. LUDWIG: I am going to 15 instruct him not to answer that question.</p>
19	Objection sustained.	<p>Page 109:19-110:6</p> <p>19 Q. Reference chrysotile, the refractive 20 index number given for that particle by ISO is 21 1.556; that corresponds to magenta, correct?</p> <p>22 MS. O'DELL: Object to the 23 form.</p> <p>24 We had an objection previously 25 to this exhibit because it calls for an expert 1 opinion and so --</p> <p>2 MR. DUBIN: Are you instructing 3 him not to answer?</p> <p>4 MR. LUDWIG: I am instructing</p>

		<p>5 him not to answer for the reasons stated 6 before.</p>
20	Objection sustained.	<p>Page 110:16-112:15 16 Q. The number -- the wavelength of 17 light that you assigned to this particle on 18 the left that you're calling chrysotile in 19 Johnson & Johnson, you are saying that it is 20 even more purple than standard reference 21 chrysotile depicted on the right, correct? 22 MS. O'DELL: Objection. 23 This is an incomplete depiction 24 of what's being examined. It is including 25 images that are not Dr. -- Mr. Hess', excuse Page 111 1 me, and it is an inappropriate examination of 2 this witness, who is a fact witness, and seeks 3 expert opinion, and we to object to it. 4 MR. DUBIN: First off, I don't 5 understand how you can say every time that he 6 is a fact witness and not an expert. He is 7 here to be deposed about his polarized light 8 microscopy work. There is no way to depose 9 someone about their polarized light microscopy 10 work without asking them questions that are 11 technical in nature. 12 And so if your objection is 13 that every time I ask him for something about 14 his conclusions, it's an expert opinion, then 15 you are essentially shutting down this 16 deposition. It's -- 17 MS. O'DELL: That's not 18 correct. We're asking -- we have not 19 instructed Mr. Hess to not respond to 20 questions that are technical. We have 21 instructed him not to give expert opinion 22 because he is here as a fact witness as you 23 know and as the Special Master has ruled. 24 And this seeks a comparison 25 between the photomicrograph that Mr. Hess took Page 112 1 to an ISO record for chrysotile and that is 2 beyond the scope of this deposition. 3 That's -- that is -- 4 MR. DUBIN: Are you instructing 5 him not to answer? 6 MS. O'DELL: Let me finish.</p>

		<p>7 I'm sorry. Let me finish. I stuttered there. 8 Judge Schneider was very clear 9 that he is going to be asked about his work 10 and not a comparison of his work to others and 11 that is expert opinion and that's why we're 12 instructing him not to answer. 13 MR. DUBIN: Okay. So you're 14 instructing him not to answer? 15 MR. LUDWIG: Correct.</p>
21	Objection sustained.	<p>Page 112:18-113:18 18 Q. I want to make sure and let me raise 19 the question. 20 As a fact, factually, you 21 assigned a darker purple color to that 22 particle on the left than standard reference 23 chrysotile, correct? 24 MS. O'DELL: Objection; that is 25 the same objection, and I just also object to Page 113 1 use of this color chart without reference to 2 the other charts from Dr. Su's tables that 3 take into consideration the temperature and 4 other aspects of the table. It's an 5 incomplete hypothetical. He -- 6 MR. DUBIN: I am sorry. I 7 don't think you understand the -- I don't 8 think you understand how the analysis works. 9 Because we already did the temperature of the 10 lab when we figured out what nanometer of 11 light he was calling the particle. So that is 12 not a valid objection scientifically. Are you 13 instructing him not to answer? 14 MS. O'DELL: I am going to let 15 Mr. Hess' counsel instruct him, but I have 16 made my objection. 17 MR. LUDWIG: I am instructing 18 him not to answer.</p>
22	Objection overruled but only if the question is directed to a relevant test.	<p>Page 123:4-124:24 4 Q. So what is the CSDS color of, let's 5 say, this large talc plate towards the bottom 6 left? What is the CSDS color that you would 7 use to assign a refractive index to that 8 particle? 9 MS. O'DELL: Which particle? 10 MR. PLACITELLA: I will place 11 an objection before he answers and I know</p>

		<p>12 you're doing the best you can, but at this 13 point, at least on the screen that I am 14 seeing, this image is pretty blurry, you know, 15 but you did -- you're doing the best you can. 16 MR. DUBIN: This is the image 17 that we have from Dr. Longo. 18 MR. PLACITELLA: Well, that's 19 not necessarily the image. This is a blowup 20 on a Zoom, you know. 21 MR. DUBIN: He also has the 22 actual report in front of him on a computer. 23 Now what? 24 MR. PLACITELLA: Just -- 25 MR. DUBIN: Okay.</p> <p>Page 124</p> <p>1 MR. PLACITELLA: -- trying to 2 keep the record clean. 3 MR. DUBIN: Okay. 4 BY MR. DUBIN: 5 Q. What CSDS color are you assigning to 6 the talc plates that we're looking at? 7 MS. O'DELL: Object to the 8 form; that seeks expert opinion. He is not 9 a -- he did not analyze these particular talc 10 particles. He didn't make findings in the 11 report. 12 To ask him to do it on the fly, 13 in a Zoom is an expert opinion and beyond the 14 scope of what he did for the report and we 15 object on that basis. 16 MR. DUBIN: Are you instructing 17 him not to answer the question? 18 MR. LUDWIG: I was just going 19 to say, exactly, and I am instructing him not 20 to answer that question because he is not -- 21 it's not the scope. Him doing an analysis of 22 a talc particle on the fly is not what the 23 Judge -- is not the purpose of this 24 deposition.</p>
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23	Objection overruled.	<p>Page 125:21-126:6</p> <p>21 Q. Okay. And do you see that there is</p> <p>22 a rounded talc plate? If you move your eye</p> <p>23 from the top of the two arrows over towards</p> <p>24 the left, there is a rounded talc plate.</p> <p>25 Do you see that?</p> <p>1 MR. LUDWIG: Objection.</p> <p>2 Once again, you're asking him</p> <p>3 to analyze what you claim to be a talc</p> <p>4 particle on the fly; that calls for expert</p> <p>5 testimony. I am instructing him not to answer</p> <p>6 that question.</p>
24	Objection overruled.	<p>Page 126:8-127:3</p> <p>8 Q. You said you have done PLM</p> <p>9 dispersion staining analysis for 30 years,</p> <p>10 Mr. Hess?</p> <p>11 A. That is correct.</p> <p>12 Q. Are you not -- are you not able to</p> <p>13 tell me -- to follow over on the image and</p> <p>14 look at this talc plate with me? Is that</p> <p>15 beyond your experience and training?</p> <p>16 MR. LUDWIG: I am going to</p> <p>17 object.</p> <p>18 This is argumentative. His</p> <p>19 experience is under the microscope. So I am</p> <p>20 objecting to the form of the question. It's</p> <p>21 argumentative.</p> <p>22 BY MR. DUBIN:</p> <p>23 Q. Is the particle you're calling</p> <p>24 chrysotile here, is that essentially the same</p> <p>25 color as the talc plates in the image?</p> <p>Page 127</p> <p>1 MR. LUDWIG: Objection, same</p> <p>2 objection. I am instructing him not to</p> <p>3 answer.</p>
25	Objection overruled.	<p>Page 128:3-129:2</p> <p>3 Q. You -- for purposes of your</p> <p>4 analysis, you're calling this particle</p> <p>5 somewhere between a magenta and a purple for</p> <p>6 purposes of your analysis, right?</p> <p>7 MS. O'DELL: Just wait a</p> <p>8 minute.</p> <p>9 What particle is this?</p> <p>10 MR. DUBIN: This is the same</p> <p>11 particle, CSM 002.</p>

		<p>12 BY MR. DUBIN:</p> <p>13 Q. You're calling it somewhere between</p> <p>14 a magenta and a purple for purposes of your</p> <p>15 analysis?</p> <p>16 A. I am calling the edge that I saw.</p> <p>17 Q. You're calling the edge that you saw</p> <p>18 purple and magenta? Is that what you're</p> <p>19 saying?</p> <p>20 A. That is correct.</p> <p>21 Q. The same type of purple or red</p> <p>22 colors that are on the talc plates?</p> <p>23 MS. O'DELL: Object to the</p> <p>24 form.</p> <p>25 MR. LUDWIG: Object to the</p> <p>Page 129</p> <p>1 form.</p> <p>2 I instruct you not to answer.</p>
26	Objection overruled.	<p>Page 129:10-130:5</p> <p>10 Q. And so one way that you can get</p> <p>11 these types of edges around particles is if</p> <p>12 they are just not -- if they are -- is your</p> <p>13 focus, depending on your focus, right?</p> <p>14 MS. O'DELL: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: Correct.</p> <p>17 BY MR. DUBIN:</p> <p>18 Q. And without these edges, without</p> <p>19 these sort of red colors at the edges, then</p> <p>20 the CSDS color that you would have had to</p> <p>21 assign to the particle would be -- would</p> <p>22 correspond to yellow, right?</p> <p>23 MR. LUDWIG: Objection to form.</p> <p>24 That's calling for an expert</p> <p>25 analysis, which he is not here to present</p> <p>1 today.</p> <p>2 MR. DUBIN: Are you instructing</p> <p>3 your witness not to answer yet again?</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 him not to answer that one, yes.</p>
27	Objection overruled.	<p>Page 136:5-18</p> <p>5 Q. Okay. And we can go back to the</p> <p>6 image in the Valadez, same image, and you can</p> <p>7 see you have these edges, the same types of</p> <p>8 edges on these -- on many of the rounded</p> <p>9 structures that are talc plates, right?</p> <p>10 MS. O'DELL: Objection to the</p>

		<p>11 form. 12 MR. LUDWIG: Same objection. 13 I instruct him not to answer. 14 Once again, on-the-fly analysis of talc 15 plates. 16 MR. DUBIN: You're instructing 17 him not to answer? 18 MR. LUDWIG: Correct.</p>
28	Objection sustained.	<p>Page 137:25-138:22 25 Q. And I am going to keep asking you 1 some questions about this and if your attorney 2 wants to object and say for you not to answer 3 to each of them, that's fine. We'll do that. 4 Can you see -- are you familiar 5 with this phenomena that even if you look at a 6 particle with a single refractive index, 7 right, for example, blue here, you can see 8 sometimes these edge effects such as the red 9 or the purple that we're seeing in this image? 10 Are you familiar with the fact 11 that that happens? 12 MS. O'DELL: Objection; beyond 13 the scope of the deposition; beyond the scope 14 of this witness' testimony; assumes facts not 15 in evidence. 16 BY MR. DUBIN: 17 Q. Do you know how to determine -- 18 sorry. 19 MR. DUBIN: Is there 20 instruction not to answer that? 21 MR. LUDWIG: There is 22 instruction not to answer that, yes.</p>
29	Objection sustained.	<p>Page 138:24-139:8 24 Q. Do you know how to determine in 25 these kind of circumstances what the true CSDS Page 139 1 color is? Do you know how to do that? 2 MR. LUDWIG: Same objection. 3 MR. DUBIN: Are you instructing 4 your witness not -- 5 MR. LUDWIG: I am. 6 MR. DUBIN: -- to answer? 7 MS. O'DELL: Join. 8 MR. DUBIN: Okay.</p>
30	Objection sustained.	<p>Page 140:21-141:13 21 Q. Okay. What is a -- do you know how</p>

		<p>22 to perform a Becke line analysis?</p> <p>23 MS. O'DELL: Beyond the scope</p> <p>24 of the reports in this case and seeks expert</p> <p>25 opinion.</p> <p>Page 141</p> <p>1 MR. DUBIN: Are you --</p> <p>2 MR. LUDWIG: Join.</p> <p>3 MR. DUBIN: -- instructing him</p> <p>4 not to answer?</p> <p>5 MR. LUDWIG: Not to answer.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. Do you know how to use a Becke line</p> <p>8 analysis to determine in a situation such as</p> <p>9 we're looking at here what the correct CSDS</p> <p>10 color is?</p> <p>11 MR. LUDWIG: Same objection;</p> <p>12 same instruction.</p> <p>13 MS. O'DELL: Join.</p>
31	Objection overruled but only if question addresses the Valedez report.	<p>Page 143:11-25</p> <p>11 Q. I tried to ask you this already,</p> <p>12 Mr. Hess, but the same type of edge effects</p> <p>13 that you're relying on to call particles</p> <p>14 chrysotile in Johnson & Johnson are also</p> <p>15 present on talc plates in your analysis; is</p> <p>16 that true?</p> <p>17 MS. O'DELL: Objection. This</p> <p>18 is beyond the scope of the deposition and</p> <p>19 Mr. Hess' testimony.</p> <p>20 Further, the way that these</p> <p>21 particles are depicted from who knows what is</p> <p>22 misleading and not representative of what was</p> <p>23 actually in the reports.</p> <p>24 MR. LUDWIG: I will join and</p> <p>25 instruct the witness not to answer.</p>
32	Objection sustained but witness shall answer with regard to the tests at issue what were the illumination settings. Witness may also be asked if he used maximum illumination settings.	<p>Page 147:24-149:12</p> <p>24 Q. Is your Leica microscope able to</p> <p>25 take images that are as bright as what we're</p> <p>Page 148</p> <p>1 seeing here in image 62?</p> <p>2 MS. O'DELL: Let me just --</p> <p>3 what is being displayed on the screen?</p> <p>4 MR. DUBIN: I am just using it</p> <p>5 for demonstrative purposes right now and I am</p> <p>6 asking him a question about his microscope.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. Is it able to take images that are</p>

		<p>9 as bright as the one that we see on the 10 screen? 11 MS. O'DELL: Object to the -- 12 object to the question; calls for expert 13 testimony. It's beyond the scope of what he 14 did for purposes of these reports. 15 MR. LUDWIG: I want to add that 16 these images call for speculation. I mean, he 17 is being asked to analyze an image on 18 PowerPoint on an unknown -- an unknown source. 19 I think this, once again, calls 20 for expert testimony to make that comparison. 21 So I am going to instruct him not to answer 22 the question. 23 MR. DUBIN: I am asking him 24 about his microscope, his illumination 25 settings, what he sees under the microscope, Page 149 1 and I'm asking him whether his microscope that 2 he knows and he works with is capable of 3 producing an image at this illumination level 4 and my question stands. 5 BY MR. DUBIN: 6 Q. Can you answer that for me, 7 Mr. Hess? 8 MR. LUDWIG: And I am making 9 the same objection I made and I am 10 incorporating the same response and 11 instructing him not to answer. 12 You're asking for a comparison.</p>
33	Objection sustained.	<p>Page 149:14-150:9 14 Q. Okay. I will tell you what this is, 15 Mr. Hess. This was an image that was taken by 16 Dr. Su on the same type of microscope that 17 you're using. 18 Are you testifying that your 19 microscope cannot take images at this level of 20 illumination? 21 MS. O'DELL: Objection; calls 22 for expert testimony, it's beyond the scope of 23 this deposition, and he has testified already 24 to the level of illumination that he has used 25 in the photomicrographs for these reports. 1 MR. LUDWIG: Once again, I am 2 going to incorporate my previous objections</p>

		<p>3 and instruct him not to answer. Dr. Su --</p> <p>4 MR. DUBIN: If you're going to</p> <p>5 instruct him not to -- if you're going to</p> <p>6 instruct him not to answer, we don't have</p> <p>7 to --</p> <p>8 MR. LUDWIG: I instruct him not</p> <p>9 to answer then.</p>
34	Objection sustained.	<p>Page 153:23-155:5</p> <p>23 Q. Looking again at the Zimmerman</p> <p>24 image, we see some talc plates here.</p> <p>25 Why isn't your talc pale yellow</p> <p>1 to white in this image?</p> <p>2 MR. LUDWIG: (Inaudible.)</p> <p>3 THE COURT REPORTER: I couldn't</p> <p>4 hear you, sir. Please repeat.</p> <p>5 MR. LUDWIG: I said, Paul, if</p> <p>6 you need it zoomed in, please feel free to ask</p> <p>7 it.</p> <p>8 THE WITNESS: Well, one, my</p> <p>9 previous comment was based on fibrous talc,</p> <p>10 not talc flakes.</p> <p>11 BY MR. DUBIN:</p> <p>12 Q. And anything else?</p> <p>13 A. No.</p> <p>14 Q. Okay. The refractive index of</p> <p>15 elongated talc or a talc fiber in parallel is</p> <p>16 similar to the refractive index of the talc</p> <p>17 plate, correct?</p> <p>18 MS. O'DELL: Calls for an</p> <p>19 expert opinion; beyond the scope of this</p> <p>20 deposition. I --</p> <p>21 MR. LUDWIG: And I join and</p> <p>22 instruct him not to answer.</p> <p>23 MR. DUBIN: I am asking him</p> <p>24 about what he just testified about, the</p> <p>25 explanation that he just testified about, and</p> <p>Page 155</p> <p>1 you're instructing him not to answer.</p> <p>2 Is that -- is that actually</p> <p>3 happening? Because -- are you instructing him</p> <p>4 not to answer that question?</p> <p>5 MR. LUDWIG: Yes.</p>
35	Objection sustained.	<p>Page 158:19-25</p> <p>19 Q. So the whole reason why dispersion</p> <p>20 staining can be used is because minerals have</p> <p>21 defined refractive indices, right?</p>

		<p>22 MR. LUDWIG: That calls for 23 expert testimony, objection. 24 I instruct you not to answer. 25 MS. O'DELL: Join.</p>
36	Objection sustained.	<p>Page 159:15-25 15 Q. Okay. So how is it in your view 16 that somehow Calidria is also showing golden 17 yellow? What physical -- what property of 18 physics changes it so that sometimes when 19 you're finding it, it's to you golden yellow 20 as opposed to magenta? 21 MR. LUDWIG: Objection, same 22 objection. 23 I instruct you not to answer. 24 Calls for expert testimony. 25 MS. O'DELL: Join.</p>
37	Objection sustained.	<p>Page 164:16-165:4 16 Q. Were you aware that MAS had recorded 17 previously their refractive indices associated 18 with Calidria asbestos? 19 MS. O'DELL: I object to -- 20 first, object to the use of this exhibit. 21 It's not been disclosed in the MDL, it's not 22 something that this witness should be asked 23 about, but I would -- I would encourage 24 counsel to instruct him not to answer. This 25 is beyond the scope. Page 165 1 MR. LUDWIG: I was going to. 2 This is totally beyond the scope of what the 3 Judge said. So I am objecting to the question 4 and I am instructing my client not to answer.</p>
38	Objection sustained but witness shall answer with regard to the relevant tests is what you are identifying as Chrysotile in J&J have magenta in parallel and blue in perpendicular.	<p>Page 167:2-22 2 Q. But you would agree that what you're 3 identifying as chrysotile in Johnson & Johnson 4 does not look like standard reference 5 chrysotile, correct? 6 It does not have the magenta in 7 parallel and blue in perpendicular associated 8 with standard reference Chrysotile, correct? 9 MS. O'DELL: Objection; 10 misstates the record; calls for expert 11 opinion. 12 MR. LUDWIG: Join. I instruct 13 the witness not to answer. 14 MR. DUBIN: So you're</p>

		<p>15 instructing him not to answer about the colors 16 that he is seeing in the analysis that this 17 whole deposition is about? Is that my -- is 18 that right? 19 MS. O'DELL: That's not 20 correct. 21 MR. LUDWIG: I am instructing 22 him not to answer the question as asked.</p>
39	Objection sustained.	<p>Page 174:2-176:3 2 MR. DUBIN: I am sure he has 3 produced his reference images because he 4 always produces his reference images because 5 we always request his reference images. 6 If you really are going to shut 7 me down from asking a question about the 8 reference images that were -- that are relied 9 on for the reports in this case, then you're 10 going -- you're going to do that. You're 11 going to make the objection and we're going to 12 go and argue about it and I think it is highly 13 improper or you could let me ask him a 14 question about an image that directly relates 15 to his work and that he took. 16 MS. O'DELL: Well, we don't 17 have -- one, there is no evidence of that and 18 second is Mr. Hess is here to testify on the 19 reports that are produced in the MDL. Other 20 things that Dr. Longo relies on are not at 21 issue here for his opinions. So -- 22 MR. DUBIN: These are the -- 23 again, these are the images that Dr. Longo 24 uses with his reports and the whole purpose of 25 this is to ask the person who took the images Page 175 1 about them. 2 I am not going to continue to 3 argue with you. If you're going to instruct 4 the witness not to answer, go ahead and do it, 5 because I think that this deposition has gone 6 way off the rails and we're going to have to 7 go to the Judge about it. So just do whatever 8 you're going to do. I don't want to argue 9 with you anymore. 10 Are you claiming that you are 11 going to stop this person, Mr. Hess, from 12 talking about the reference images for the</p>

		<p>13 alleged chrysotile in Johnson & Johnson? If</p> <p>14 so, instruct him, and let's just have that</p> <p>15 done.</p> <p>16 MS. O'DELL: Judge Schneider</p> <p>17 was very clear as to what was fair game in</p> <p>18 this deposition and those are the reports</p> <p>19 produced in the MDL that involve the new</p> <p>20 method, to my knowledge. And you can correct</p> <p>21 me, but I don't think I am incorrect.</p> <p>22 This is not a part of those</p> <p>23 reports and it's not something that's an</p> <p>24 appropriate scope of this deposition and we</p> <p>25 would instruct the witness not to answer.</p> <p>Page 176</p> <p>1 MR. LUDWIG: And I am going to</p> <p>2 join for the reasons stated and instruct the</p> <p>3 witness not to answer.</p>
40	Objection sustained.	<p>Page 178:6-179:7</p> <p>6 (Exhibit 27 marked for</p> <p>7 identification.)</p> <p>8 MS. O'DELL: I'm sorry. Is</p> <p>9 this exhibit 27?</p> <p>10 MR. DUBIN: Twenty-seven.</p> <p>11 MR. LUDWIG: (Inaudible.)</p> <p>12 THE COURT REPORTER: If you</p> <p>13 just said something, Mr. Hess, I couldn't hear</p> <p>14 you.</p> <p>15 MR. LUDWIG: That was me</p> <p>16 talking to myself. I apologize, Jessica. I</p> <p>17 am simply saying that my exhibit list is</p> <p>18 mis-numbered for some reason.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Are you claiming those two -- those</p> <p>21 two images have the same dispersion staining</p> <p>22 colors?</p> <p>23 MR. LUDWIG: I am going to</p> <p>24 object to the form of the question.</p> <p>25 MS. O'DELL: I object to the</p> <p>Page 179</p> <p>1 question.</p> <p>2 MR. LUDWIG: Yeah.</p> <p>3 MS. O'DELL: This is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Yes. This is</p> <p>7 beyond the scope.</p>

